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IQ-LUDORUM PLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, v. IQ-LUDORUM PLC, PLAYTECH CYPRUS LTD., TILTWARE LLC, and KOLYMA CORPORATION, A.V.V., Defendants.	Case No. 2:06-cv-0323-LDG-RJJ DEFENDANT IQ-LUDORUM PLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR IN THE ALTERNATIVE, TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) OR FOR A MORE DEFINITE STATEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Defendant, IQ-Ludorum ("IQL"), a United Kingdom corporation, by and through its counsel of record, DLA Piper Rudnick Gray Cary US LLP, hereby moves, pursuant to Fed. R. Civ. P. 12(b)(2), to dismiss Plaintiff, 1st Technology LLC's ("Plaintiff") Complaint for Patent Infringement for lack of personal jurisdiction. In the event this Court deems jurisdiction is appropriate, IQL requests an order dismissing the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim or requiring a more definite statement by Plaintiff pursuant to Fed. R. Civ. P. 12(e). This Motion is based upon the attached memorandum of points and authorities, the Declaration of Tony Norris, the papers, pleadings and records contained in this Court's file, and any arguments of counsel to be presented at the hearing on this matter.

Dated this 1st day of August, 2006.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY US LLP

/s/ Joanna S. Kishner

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Paul T. Trimmer, Esq.
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Attorneys for Defendant
IQ-Ludorum PLC

DEFENDANT IQ-LUDORUM PLC'S
MEMORANDUM OF POINTS AND AUTHORITIES

Defendant, IQ-Ludorum PLC ("IQ-L"), a United Kingdom corporation, for its Memorandum of Points and Authorities in Support of its Motion to Dismiss for Lack of Personal Jurisdiction, or in the alternative, to Dismiss pursuant to Rule 12(b)(6) or for a More Definite Statement, states as follows:

I. INTRODUCTION

On March 15, 2006, Plaintiff filed its Complaint alleging patent infringement against multiple Defendants, including IQL. The Complaint alleges infringement of U.S. Patent No. 5,564,001, entitled Method and System of Interactively Transmitting Multimedia Information Over a Network Which Requires Reduced Bandwidth (the "'001 Patent"). (*See* Complaint).

IQL is a corporation organized under the laws of the United Kingdom and Wales**.** *See* Declaration of Tony Norris, ¶ 3 ("Norris Decl."), a true and correct copy of which is attached hereto as Exhibit A. IQL has no contacts, minimum or otherwise, with the State of Nevada and is not subject to personal jurisdiction in the state or federal courts of Nevada. Plaintiff's Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2).

The Complaint does not identify a single IQL product that allegedly infringes the '001 Patent, nor does the Complaint allege a specific act of infringement by IQL or any particular acts of infringement by IQL within the United States. Although Plaintiff's Complaint alleges infringement of a method patent, the Complaint fails to identify the steps of the method patent or how all of the steps of the patent are infringed by IQL within the United States. Accordingly, Plaintiff's Complaint fails to state a claim upon which relief may be granted because it does not properly allege any acts of infringement by IQL occurring within the United States in accordance with *NTP, Inc. v. RIM, Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005). Therefore, Plaintiff's impermissibly vague Complaint prevents IQL from framing a meaningful responsive pleading. For these reasons, Plaintiff's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) and Plaintiff should be required to amend the Complaint or Plaintiff should provide a more definite statement pursuant to Fed. R. Civ. P. 12(e).

II. ARGUMENT

A. The Court Lacks Jurisdiction Over IQL.

Plaintiff bears the burden of establishing personal jurisdiction over IQL – a burden it has not, and cannot, overcome. *Farmers Ins. Exch. v. Portage la Prairie Mut. Ins. Co.*, 907 F.2d 911, 912 (9th Cir. 1990). In analyzing jurisdiction, the trial court is not bound by the pleadings, and the party asserting jurisdiction has the burden of establishing jurisdiction if its allegations are challenged in any appropriate manner. *Taylor v. Portland Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967).

Though Plaintiff's Complaint includes a conclusory allegation that jurisdiction over IQL is appropriate, mere allegations in the Complaint, when contradicted by affidavits, are not sufficient to confer jurisdiction. *Id.; AMBA Marketing Systems, Inc v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977) (Plaintiff cannot rest solely on the allegations of its complaint, but rather is obligated to come forward with facts supporting personal jurisdiction). A court may not assume the truth of allegations which are contradicted by affidavit. *See Data Disc*, 557 F.2d at 1284.

1. Plaintiff's Complaint Should Be Dismissed Because The Court Lacks General Jurisdiction Over IQL.

The Court lacks general jurisdiction because Plaintiff has not, and cannot, demonstrate that IQL has engaged in such continuous and systematic general business contacts with the forum state that those contacts approximate physical presence in the state. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). Specifically, factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there. *See Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

Plaintiff has neither alleged nor demonstrated the existence of a single fact sufficient to support a finding of general jurisdiction over IQL. Though Plaintiff conclusory alleges that IQL has transacted business within the State of Nevada, it cites to no examples of actual business transactions to support this assertion. IQL does not make sales, or solicit or engage in business in the State of Nevada. Since its formation on June 8, 2000, IQL has **not**:

- had an agent for service of process in the State of Nevada;
- been incorporated or licensed to do business in the State of Nevada;
- conducted business operations in the State of Nevada;
- maintained any office, facility, mailing address, or telephone listing in the State of Nevada;
- leased or owned property in the State of Nevada;
- performed services for any person or firm in the State of Nevada;
- possessed any employees, officers, directors or agents resident in the State of Nevada;
- paid taxes to the State of Nevada in connection with any business transactions or enterprises;
- placed advertisements intended for circulation solely within the State of Nevada;
- maintained any bank accounts in the State of Nevada;
- owned, designed, developed, manufactured any software product;
- sold or imported any software product in the State of Nevada or otherwise in the United States; and

- licensed or sold licenses for any gaming entertainment software product in the State of Nevada or otherwise.

(Norris Decl. ¶¶ 4-18.)

Plaintiff has failed to demonstrate sufficient grounds to support a finding of general jurisdiction over IQL warranting dismissal of Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(2).

2. Plaintiff's Complaint Should Be Dismissed Because The Court Lacks Specific Jurisdiction Over IQL.

Similarly, specific jurisdiction is lacking. In order for this Court to find specific jurisdiction it must determine that (1) the non-resident defendant has purposely directed its activities towards the forum state or performed some act by which it purposely availed itself of the privilege of conducting activities in the forum; (2) plaintiff's claim arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). Plaintiff bears the burden of satisfying the first two prongs of this test, and must satisfy both before the burden shifts. *See id*. (*citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

Plaintiff has failed to meet this burden as it has not, and cannot, point to a single fact to support the propriety of specific jurisdiction over IQL. The Complaint fails to demonstrate that IQL has purposely availed itself of the privilege of conducting activities in Nevada or purposely directed its activities toward Nevada. *See id.*

It is clear from the Norris Declaration that IQL has never made, sold, licensed or developed any software product. (*See* Norris Decl. at ¶¶ 16-18.) Plaintiff cannot satisfy the first prong of the test because IQL has not purposely availed or purposely directed its activities toward Nevada. Likewise, as IQL has not, and does not, engage in any forum-related activities, Plaintiff cannot satisfy prong two of the personal jurisdiction test. Plaintiff's claims, therefore, are insufficient to establish that this Court has jurisdiction. Accordingly, IQL respectfully requests that the Complaint be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

3. IQL Is Not Subject To Jurisdiction Based Upon Operations Of Subsidiaries.

IQL has not owned, designed, developed, manufactured or licensed any software product. (Norris Decl. ¶¶ 16, 18.) Since its organization, IQL has only held an interest in various wholly owned subsidiaries and other entities which have been involved in the development, ownership, licensing and sale of gaming entertainment software, customer service to operators of gaming websites, as well as other business activities, including payment processing services for gaming and non-gaming businesses. (Norris Decl. ¶ 20.)

Intellectual Services International Limited ("ISI") and IQ-LUDORUM Software (Canada) Limited are wholly owned subsidiaries of IQL. (Norris Decl. ¶ 21.) ISI principally conducts development, production, marketing and license sales of systems for digitally distributed entertainment operators, including software products licensed to third parties engaged in the operation of gaming entertainment websites. (Norris Decl. ¶ 26.) IQ-LUDORUM Software (Canada) Limited performs services related to the research and development of gaming entertainment software. (Norris Decl. ¶ 28.)

Although ISI owns and licenses gaming entertainment software products and IQ-LUDORUM Software (Canada) Limited performs services related to the research and development of gaming entertainment software, these entities are distinct and separate from IQL. (Norris Decl. ¶ 31.) Both the Ninth Circuit and the United States Supreme Court have acknowledged that the mere "existence of a relationship between a parent company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiary's minimum contacts with the forum." *Doe v. Unocal*, 248 F.3d 915, 925 (9th Cir. 2001); *Keetan v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n. 13, 104 S.Ct. 1473, 79 L.Ed.2d

790 (1984); *Church of Scientology v. Adams*, 584 F.2d 893, 897 (9th Cir. 1978) ("Even in cases where the contacts of a parent or subsidiary corporation are sufficient to subject it to personal jurisdiction, we recognize that the activities of one related corporation are irrelevant to the issue of jurisdiction over the other, so long as a separation between the corporations has been maintained.") (*citing Uston v. Grand Resorts, Inc.*, 564 F.2d 1217, 1218 (9th Cir. 1977)).

ISI and IQ-LUDORUM Software (Canada) Limited are separate business entities that function independently of IQL. (Norris Decl. ¶ 31.) ISI and IQ-LUDORUM Software (Canada) Limited maintain separate books, records and bank accounts from IQL. (Norris Decl. ¶ 30.) Further, IQL does not control, operate, or manage the day-to-day business operations of ISI or IQ-LUDORUM Software (Canada) Limited. (Norris Decl. ¶ 32.)

Because the mere existence of a parent-subsidiary relationship alone is insufficient for this Court to acquire jurisdiction over IQL, Plaintiff's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

B. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED OR PLAINTIFF SHOULD BE REQUIRED TO AMEND OR FILE A MORE DEFINITE STATEMENT.

Plaintiff's Complaint is so vague that IQL cannot reasonably be expected, let alone required, to frame a responsive pleading. Plaintiff's Complaint fails to state a claim upon which relief may be granted because it fails to outline allegedly infringing conduct by IQL within the United States. In accordance with *NTP, Inc. v. RIM, Ltd.*, 418 F.3d 1282, 1313 (Fed. Cir. 2005), Plaintiff's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). The territorial reach of 35 U.S.C. § 271 is limited. *NTP, Inc.*, 418 F.3d at 1313. Section 271(a) is only actionable against patent infringement that occurs within the United States. *Id.*

Here, Plaintiff's Complaint alleges infringement of the '001 patent. All claims of the '001 patent are method claims. The Federal Circuit has held that *all* steps of a method claim must be performed within the United States in order for there to be infringement of a United

States patent. *Id.* at 1318. Here, the Complaint fails to state identify the steps of the method patent which IQL is alleged to take in the United States, and how such conduct infringes the ‘001 patent. Moreover, Plaintiff’s Complaint fails to allege that any particular acts of infringement occurred within the United States. Therefore, Plaintiff’s Complaint fails to state a claim upon which relief can be granted and it should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Alternatively, Fed. R. Civ. P. 12(e) provides a remedy in cases, such as this, where the ambiguity of a complaint denies the responding party the opportunity to prepare an adequate responsive pleading. Pursuant to Rule 12(e), the trial court has the discretion to require plaintiff to provide a more definite statement, and at the very least, give the responding party fair notice of the nature and grounds for the asserted claims. *See Rendon v. Fresno Police Department*, No. 1:05-CV-00661OWWDLB, 2005 WL 1925859, at *2 (E.D. Cal. Aug. 11, 2005). As Plaintiff’s Complaint fails to meet even the minimum standard of clarity and definition, IQL requests a more particularized statement or that Plaintiff be required to file an Amended Complaint.

IQL is entitled to a more definite statement because Plaintiff’s Complaint fails to identify a single infringing product, process, or action. Though federal case law requires a plaintiff to specify which products allegedly infringed plaintiff’s patents, Plaintiff’s Complaint makes no mention of any product names, product components, or product descriptions. *See, e.g., Agilent Technologies, Inc. v. Micromuse, Inc.*, No. 04 Civ. 3090 (RWS), 2004 WL 2346152, at *5-6 (S.D.N.Y. Oct. 19, 2004) (where a complaint does not specify which products allegedly infringed plaintiffs' patents, defendant is entitled to know which of its products or services are alleged to have infringed . . . and a more definite statement setting forth that information is appropriate*); Ondeo Nalco Co v. EKA Chemicals, Inc.*, No. Civ. A. 01-537-SLR, 2002 WL 1458853, at *1, n.2 (D. Del. June 10, 2002) (where counterclaims contained minimal description of infringed products, counterclaims were too vague to provide the plaintiff with fair notice of which products were accused of infringing) (citation omitted); *In re Papst Licensing GmbH Patent Litig.*, No. Civ. A. MDL 1298, Civ. A. 99-3118, 2001 WL 179926, at *1 (E.D. La. Feb. 22, 2001) (granting Rule 12(e) motion and requiring plaintiff to amend complaint to specify which products allegedly infringed).

Despite the fact that IQL is entitled to notice of which of its products or services are alleged to have infringed upon Plaintiff's patent, and such information is necessary for IQL to form an adequate responsive pleading, Plaintiff alleges only that an IQL "software product" infringed one of more claims of the "'001 Patent." (*See* Complaint, ¶ 5.) Plaintiff's Complaint is similarly silent as to the alleged timeframe of infringement and any of IQL's alleged infringing actions. Accordingly, IQL is entitled to a more definite statement because Plaintiff's Complaint fails to identify a single infringing product or process.

No additional burden is imposed on Plaintiff by requiring it to provide a more definite statement. Rule 11 of the Federal Rules of Civil Procedure required Plaintiff to make a reasonable pre-suit inquiry entailing a comparison of specific IQL products to the specific claims of the '001 patent. *See e.g., Antonious v. Spalding & Evenflo Companies, Inc.*, 275 F.3d 1066 (Fed. Cir. 2002) (in patent cases, Rule 11 requires at a minimum, that an attorney interpret the asserted patent claims and compare the accused device with those claims before filing a claim alleging infringement). Therefore, in making this request, IQL merely asks Plaintiff to articulate, in an Amended Complaint, conclusions that it was required to have made *prior* to the initiation of this lawsuit.

III. CONCLUSION

Plaintiff's Complaint fails to demonstrate that IQL has the required minimum contacts within the state of Nevada sufficient to support a finding of jurisdiction. Therefore, Plaintiff's claims against IQL should be dismissed, pursuant to Fed. R. Civ. P. 12(b)(2), for lack of jurisdiction. In the event that this Court deems jurisdiction appropriate, Plaintiff's claims against IQL should be dismissed for failing to state a claim upon which relief may be granted as Plaintiff’s Complaint fails to meet even the minimum standard of clarity and definition. Accordingly, pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff’s Complaint should be dismissed, or, in the alternative, Plaintiff should be required to file a more definite statement or amend its complaint pursuant to Fed. R. Civ. P. 12(e).

Date this 1st day of August, 2006.

Respectfully submitted,

DLA PIPER RUDNICK GRAY CARY US LLP

/s/ Joanna S. Kishner

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3960 Howard Hughes Parkway
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Las Vegas, Nevada 89109

Attorneys for Defendant
IQ-Ludorum PLC

CERTIFICATE OF SERVICE

Pursuant to Special Order #109, counsel of record registered for the CM/ECF system have been served with the foregoing **Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) or for a More Definite Statement and Memorandum of Points and Authorities in Support Thereof** by electronic means. In addition, pursuant to Fed. R. Civ. P. 5(b), I hereby certify that the service of the same was made this day by depositing a true copy of the same for mailing at Las Vegas, Nevada, addressed to:

Michael J. McCue, Esq.
Lewis & Roca
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89109

this 1st day of August, 2006.

/s/ Paul Trimmer
An Employee Of DLA Piper Rudnick
Gray Cary US LLP

EXHIBIT A

JOANNA S. KISHNER, ESQ.
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IQ-LUDORUM PLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1ST TECHNOLOGY LLC, Plaintiff, v. IQ-LUDORUM PLC, PLAYTECH CYPRUS LTD., TILTWARE LLC, and KOLYMA CORPORATION, A.V.V., Defendants.	Case No. CV-S-06 DECLARATION OF TONY NORRIS

TONY NORRIS, declares as follows:

1. I am the Chief Financial Officer and Executive Director of IQ-Ludorum PLC ("IQL"). I am knowledgeable about IQL's business and operations and am familiar with the subjects set forth in this Declaration. I have provided this declaration in my capacity as an officer of IQL at the request of and on behalf of the Board of Directors of IQL.

2. The facts set forth in this Declaration are true and correct and are based upon information personally known to me and gathered by me from others.

3. IQL is a corporation organized under the laws of the United Kingdom and Wales.

4. IQL was incorporated on June 8, 2000.

5. IQL's headquarters and principal place of business is 28 Eccleston Square Victoria, London, United Kingdom.

6. Since its organization, IQL has had no agent for service of process in the State of Nevada.

7. Since its organization, IQL has not been incorporated or licensed to do business in the State of Nevada.

8. Since its organization, IQL has not conducted business operations in the State of Nevada.

9. Since its organization, IQL has not maintained any office, facility, mailing address, or telephone listing in the State of Nevada.

10. Since its organization, IQL has not leased or owned property in the State of Nevada.

11. Since its organization, IQL has not performed services for any person or firm in the State of Nevada.

12. Since its organization, IQL has not possessed any employees, officers, directors or agents resident in the State of Nevada.

13. Since its organization, IQL has not paid taxes to the State of Nevada in connection with any business transactions or enterprises.

14. Since its organization, IQL has not placed advertisements intended for circulation solely within the State of Nevada.

15. Since its organization, IQL has not maintained any bank accounts in the State of Nevada.

16. Since its organization, IQL has not owned, designed, developed, manufactured any software product.

17. IQL has never sold or imported any software product in the State of Nevada or otherwise in the United States.

18. IQL has never licensed or sold licenses for any gaming entertainment software product in the State of Nevada or otherwise.

19. Since its organization, neither IQL, any subsidiary, nor any company in which IQL has possessed an interest, has owned or operated any website that utilizes a gaming entertainment software product in the State of Nevada or otherwise.

20. Since its organization, IQL has held an interest in various wholly owned subsidiaries and other entities which have been involved in the development, ownership, licensing and sale of gaming entertainment software, customer service to operators of gaming websites, as well as other business activities, including payment processing services for gaming and non-gaming businesses.

21. Since its organization, IQL has, at different times, had an interest in various wholly owned subsidiaries, to wit: IQ-LUDORUM Software (Canada) Limited, Crystal Technical Support SA (Costa Rica), Tempus Fugit SA (Costa Rica), Intellectual Services International SA (Costa Rica), Missionary From the Druids SA (Costa Rica), Intellectual Services International Limited (Turks and Caicos), IQ Denmark ApS, IQ-LUDORUM Software (UK) Limited ("IQ-LUDORUM (UK)"), First Pay Limited (Antigua).

22. IQL also possesses a minority interest in Paytru Card Services Limited (Antigua) ("Paytru").

23. IQL and its subsidiaries and Paytru maintain separate books and records, bank accounts, day-to-day operations, management, boards of directors and officers.

24. At all times pertinent, IQL and its subsidiaries and Paytru have been separate and distinct legal entities.

25. Intellectual Services International Limited ("ISI") is an entity organized under the laws of Turks & Caicos, with a principal place of business on Leeward Highway, Providenciales, Turks & Caicos Island, British West Indies.

26. ISI principally conducts development, production, marketing and license sales of systems for digitally distributed entertainment operators, including software products licensed to third parties engaged in the operation of gaming entertainment websites.

27. ISI owns and licenses gaming entertainment software products.

28. IQ-LUDORUM Software (Canada) Limited performs services related to the research and development of gaming entertainment software.

29. Other than ISI and IQ-LUDORUM Software (Canada) Limited, neither IQL nor any other subsidiaries are engaged in the ownership, licensing, development, or sale of gaming entertainment software.

30. ISI and IQ-LUDORUM Software (Canada) Limited maintain separate books, records and bank accounts from IQL.

31. ISI and IQ-LUDORUM Software (Canada) Limited are separate business entities that function independently of IQL.

32. IQL does not control, operate, or manage the day-to-day business operations of ISI or IQ-LUDORUM Software (Canada) Limited.

33. IQL has not consented and does not consent to be sued in the State or Federal Courts for the State of Nevada.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 1, 2006.

TONY NORRIS
Chief Financial Officer and Executive Director
IQ-Ludorum PLC